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**United States of America**  
**In the**  
**Supreme Court of the United States**

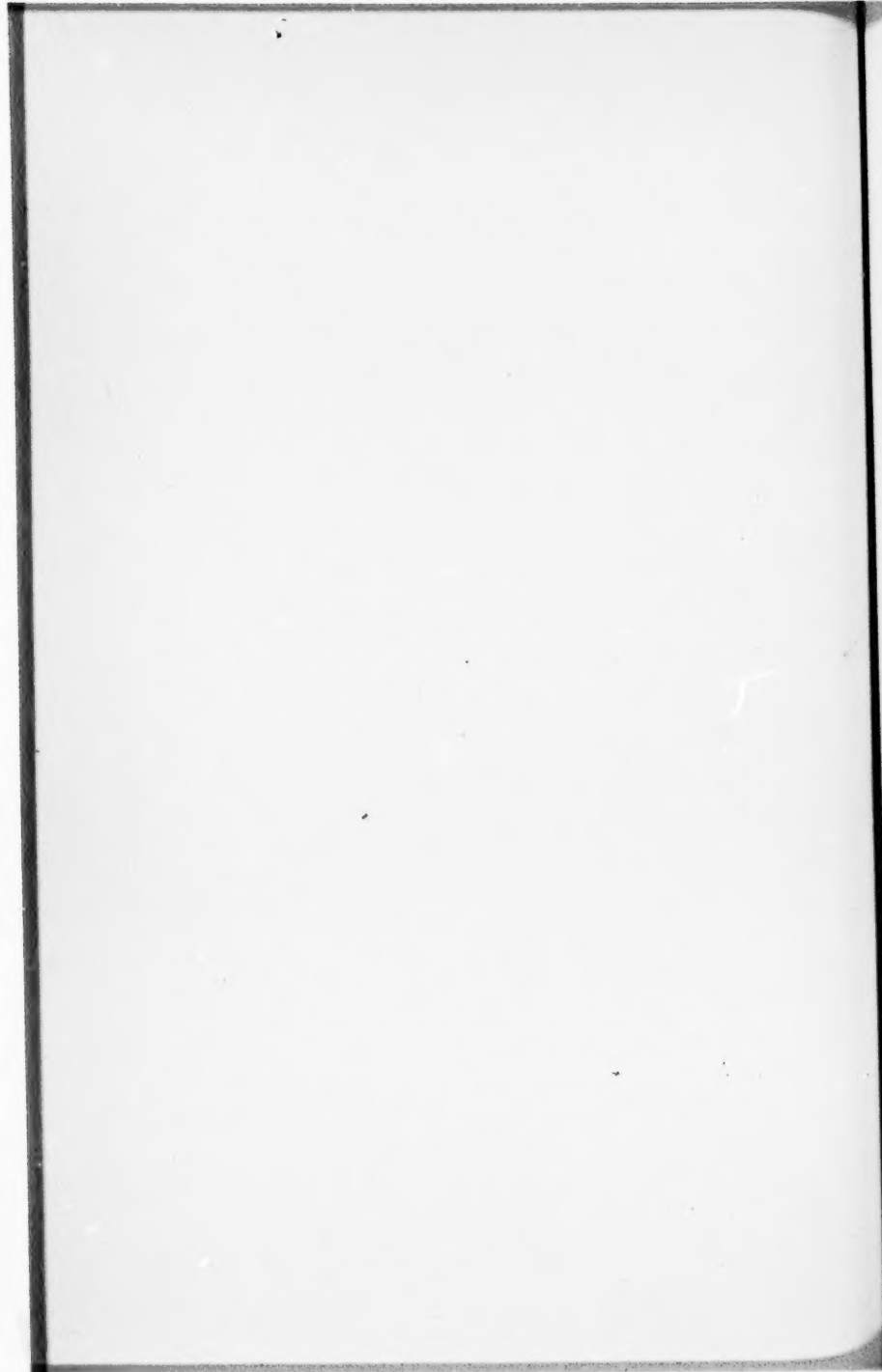
**OCTOBER TERM, 1943**

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No. 1230  
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**FLORA COYNE, et al.,**  
**Petitioners,**  
**vs.**  
**SIMRALL CORPORATION, et al.,**  
**Respondents**

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**PETITION FOR WRIT OF CERTIORARI TO**  
**THE UNITED STATES CIRCUIT COURT OF**  
**APPEALS FOR THE SIXTH CIRCUIT AND**  
**BRIEF IN SUPPORT THEREOF**  
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“Where there is a mistake on one side, AND KNOWLEDGE OF THE MISTAKE PLUS CONCEALMENT ON THE OTHER, reformation will be decreed” (R. 493) (Capitals ours).

which legal proposition, in fact, is utterly foreign to the case at bar, for it is undisputed, as the Appellate Court stated, that none of the parties had any knowledge of the existence of the royalty apportionment clause contained in the lease, and without knowledge, there could be no concealment . . . . .

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No.....

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FLORA COYNE, Defendant, BERNARD J. COYNE, MARY COYNE, GENEVIEVE COYNE, BASIL WAYNE COYNE, CHARLES H. NIXON, PEARL NIXON, WELLINGTON NIXON, FRED J. TRUMPY, and MARTHA ROSE TRUMPY, so-called "Coyne Defendants," jointly and severally,

Appellants,

vs.

SIMRALL CORPORATION, Plaintiff, and ALMA ANDERSON, MARY A. AURENTZ, ESTELLA C. BAUER, FRANK J. BEHM, HELEN BEHM, CHARLES H. BELL, HARRY M. BELL, JOSEPH BENJAMIN, GEORGE E. BERSETTE, MARK BICKNELL, WARD J. BLUNT, LEO G. BROTT, EDITH D. CONRAD, GEORGE A. CONRAD, CLARK D. CORE, EZRA L. DEIBLE, RALPH DENNING, DIVERSIFIED ROYALTIES, INC., a Michigan corporation of Saginaw, Michigan, NICK R. DODD, KATE EDMUNDS, ALFRED J. FLEMING, EDGAR I. FLEMING, LANGAN J. FOARD, HARRIET GODFREY, HARRY GODFREY, H. D. GORDON, ROLLIN C. GORDON, JOHN J. GUELF, CHARLES V. HALE, D. CLARE HARRINGTON, DONALD E. HOLBROOK, ELMER S. HOLMGREN, ELIZABETH M. JACOBS, RICHARD JOHNSON, BESSIE JONES, MARGARET JONES, ROBERT T. JONES, MOLLIE KENT, ALBERT J. KOERNER, JOHN KOFFMAN, SYLVESTER LeVALLEY, JANE LUNDELL, MARY LOUISE LUNDELL, HAROLD MAAS, JANETTE MacLAREN, ALBERT S. MARTUS, ETHEL M. MARTUS, ARCHIE D. McINTYRE, GEORGE J. MOUTSATSON, KATINA MOUTSATSON, AUDREY WILCOX NELSON, WILLIAM F. NELSON, HERMAN E. OLSON, BELLE D. PALMER, PEARL K. PETERS, SILAS PETTIT, GEORGE W. PIRTLE, EDWARD PRIOR, JR., IMO G. PRIOR, GERTRUDE QUINLAN, GROVER L. RIDDLEMOSER, LEILA B. RIDDLEMOSER, GEORGE V. ROWE, FRANK RUSSELL, JR., JAMES E. RYAN, SCHEID & COMPANY, a Michigan corporation of Mt. Pleasant, Michigan; ALBERT H. SCHROEPPPEL, IVERNA H. SCHROEPPPEL, EUNICE C. SHIDEMAN, LEO K. SHOWALTER, Trustee, ELMER SMEBERG, ANNA D. STANLEY, DAVID A. STEELE, MAE B. STEELE, IVA L. STORNE, MATTIE L. STORNE, CLARK E. TERRY, PHOEBE L. TERRY, BENJAMIN TRAINES, ROSE TRAINES, FRANK O. WILKINS, THOMAS T. WRIGHT and ADONIJAH J. YOUNANS, so-called "Adverse Defendants,"

Appellees.

PETITION FOR WRIT OF CERTIORARI

**MAY IT PLEASE THE COURT:**

The petition of Flora Coyne, Bernard J. Coyne, Mary Coyne, Genevieve Coyne, Basil Wayne Coyne, Charles H. Nixon, Pearl Nixon, Wellington Nixon, Fred J. Trumpy and Martha Rose Trumpy respectfully shows to this Honorable Court:

**A.**

**SUMMARY STATEMENT OF THE MATTER  
INVOLVED**

On May 3, 1937, Flora Coyne, one of the petitioners, was the owner of several contiguous tracts of land situated in Freeman Township, Clare County, Michigan, described as follows:

NW fr/4 (containing 177.74 acres); N/2 of SW/4 (containing 80 acres); NW fr/4 of NE fr/4 (containing 47.44 acres); and SW/4 of NE fr/4 (containing 40 acres); all in Section 4, Township 18 North, Range 6 West, containing in all 345.18 acres, more or less (R. 2).

On said date of May 3, 1937, Flora Coyne executed and delivered an oil and gas lease to the Carter Oil Company, of Tulsa, Oklahoma, as lessee, which lease covered all of said lands and was duly recorded on May 21, 1937, in the Office of the Register of Deeds for said County of Clare in Liber 93 of Deeds at page 493 (R. 2).

The lease provided a one-eighth royalty to the lessor (R. 19). Said lease was made on a printed form and contained the following provision which petitioners herein refer to as the "royalty apportionment clause":

"It is covenanted and agreed that should the fee of said land be divided into separate parcels, held by different owners, or should the rental or royalty interests hereunder be so divided in ownership, after the execution of this lease, the obligations of the lessee hereunder shall not be added to or changed in any manner whatsoever as specifically provided by the terms of this lease. Notwithstanding such separate ownership, lessee may continue to drill and operate said premises as an entirety. PROVIDED, EACH SEPARATE OWNER SHALL RECEIVE SUCH PROPORTION OF ALL RENTALS AND ROYALTIES ACCRUING AFTER THE VESTING OF HIS TITLE AS THE ACREAGE OF THE FEE, OR RENTAL OR ROYALTY INTEREST, BEARS TO THE ENTIRE ACREAGE COVERED BY THE LEASE, OR TO THE RENTAL AND ROYALTY INTEREST AS THE CASE MAY BE. \* \* \*"  
(Capitals ours).

(Exhibit "A," Oil and Gas Lease—R. 18—Provision on R. 23).

Flora Coyne, subsequent to the execution and recording of said oil and gas lease, executed and delivered mineral deeds on printed forms to the following named persons on the dates and covering an undivided interest in the oil and gas in the tract described opposite their respective names (R. 25):

- (1) A. J. Fleming July 9, 1938  
1/2 NW fr/4 of NE fr/4 of Section 4
- (2) Carl J. Westlund July 11, 1938  
5/40 NW fr/4 of NE fr/4 of Section 4
- (3) Gertrude Quinlan July 11, 1938  
1/4 NW fr/4 of NE fr/4 of Section 4
- (4) Richard Lueder July 11, 1938  
1/4 SW/4 of NE fr/4 of Section 4

- (5) Carl J. Westlund July 11, 1938  
5/40 SW/4 of NE fr/4 of Section 4
- (6) Harry M. Bell and Edward Prior, Jr. July 12, 1938  
20/40 SW/4 of NE fr/4 of Section 4
- (7) George W. Pirtle Sept. 21, 1938  
1/40 SW/4 of NE fr/4 of Section 4

The mineral deed to Gertrude Quinlan contained the following provision:

*"Said land being now under an oil and gas lease executed in favor of Carter Oil Co. it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes 1/4th of all of the oil royalty and gas rental or royalty due and to be paid under the terms of said lease insofar as it covers the lands above described"* (Exhibit "C" R. 27) (Italics ours).

ALL OF THE OTHER MINERAL DEEDS CONTAINED THE SAME PROVISION except that the amount of interest in each conformed to their respective fractional interests as above set forth (R. 4).

The respondents, other than Simrall Corporation, were the grantees in the above designated mineral deeds and their assignees under the same form of mineral deeds (R. 4).

The respondent Simrall Corporation is a company engaged in the business of purchasing and gathering crude oil in the State of Michigan, and is the purchaser of the oil produced from the leased premises (R. 7).

The petitioners, other than Flora Coyne, are, for the most part, persons related to Flora Coyne and who have acquired from her under the same form of mineral deeds

fractional mineral interests in parts of the leased premises other than the tracts described in the mineral deeds under which the respondents claim (R. 6 and 7).

The owner of the oil and gas lease is not a party in this suit.

Three of the grantees in the mineral deeds from Flora Coyne, under which the respondents are claiming, were produced by respondents as witnesses on their behalf and testified that they were experienced royalty buyers; that they provided the mineral deed forms which were used in their transactions with Flora Coyne; that they were thoroughly familiar with the provisions of the mineral deed forms; that each of them knew such form expressly recited that the sale covered thereby was subject to all of the terms of the oil and gas lease; that each of them knew the lease was of record; that one of such royalty buyers visited the Office of the Register of Deeds and there examined the recorded lease before completing his purchase; that another of such royalty buyers, before consummating his transaction, secured an opinion of title from his attorney; that each of said grantees understood that his purchase was subject to the terms of the oil and gas lease as the deed so expressly stated; and that the deed was the same as though all of the terms of the lease were contained in the deed word for word (R. 237 to 254 and 339 to 354).

It was conceded at the trial of this cause by the attorney for respondents that the testimony of the other grantees from Flora Coyne would have been repetition of the above testimony given by the three grantees that were produced (R. 339).

IT IS NOT DISPUTED, AND AS FOUND BY BOTH THE TRIAL AND APPELLATE COURTS, THAT

NEITHER FLORA COYNE NOR ANY OF HER GRANTEES KNEW THAT THE ROYALTY APPORTIONMENT CLAUSE WAS CONTAINED IN SAID OIL AND GAS LEASE, AND HAD NO KNOWLEDGE WHATSOEVER OF ITS EXISTENCE UNTIL THEY WERE INFORMED BY SIMRALL CORPORATION (R. 211; R. 487 and R. 493).

On January 5, 1939, which was subsequent to the time Flora Coyne executed and delivered all of said mineral deeds, the owner of the lease brought in a producing well on the leased premises. Thereafter three additional producing wells were drilled thereon. All of said wells are located on the two tracts of land described in the mineral deeds under which the respondents (other than Simrall Corporation) are claiming. No further wells have, as yet, been drilled on any other part of the leased premises (R. 7).

Simrall Corporation, pursuant to its customary practice, caused an examination of title to the premises to be made so that it would be advised as to the division of the proceeds for the oil produced from said wells. Division orders on the printed form of Simrall Corporation were obtained. Said orders set forth the divisions of interest on a basis of ownership in the producing tracts, rather than on a *pro rata* basis of ownership in the entire leased premises in accordance with the royalty apportionment clause contained in the lease. Simrall Corporation explains that this was done because their examination of title did not disclose the fact that the oil and gas lease contained a royalty apportionment clause (R. 8 and 261).

Simrall Corporation discovered its mistake and obtained knowledge of the royalty apportionment clause in November, 1939, and upon being so informed, they suspended

payments and impounded the royalty (R. 9). Thereafter, Simrall Corporation released payments for the October and November, 1939 production on the basis of its existing division orders, but impounded all other and future royalty funds, and subsequently, on February 13, 1941, filed this suit of interpleader (R. 330).

Before filing this suit, Simrall Corporation attempted to obtain the execution of an agreement which had for its purpose the deletion of the royalty apportionment clause from the lease, but the same was not obtained and no claim is asserted by any of the respondents thereunder (R. 12, 357 and 359).

Flora Coyne had no knowledge that the royalty apportionment clause was contained in the oil and gas lease until she was informed thereof by Simrall Corporation in October, 1939, which was two and one-half years after she made the lease and which was a considerable time after she made the mineral deeds and signed the division orders (R. 487, 25-26, 26-29, 29-30 and 30-33).

The respondents in their original pleadings and until the conclusion of the trial sought to have the royalty apportionment clause contained in the lease adjudged to be invalid. At the conclusion of the trial, the respondents requested and obtained permission to amend their pleadings, seeking to reform the mineral deeds in a manner so that their mineral deeds would remain subject to all the terms of the oil and gas lease except the royalty apportionment clause (R. 220-221).

The District Court granted reformation of the mineral deeds in the following language:

“So the decree is that these people be paid according to their description just as if that clause, in the Carter lease, wasn't in there at all” (R. 219).

The United States Court of Appeals for the Sixth Circuit affirmed the reformation decreed by the District Court (R. 494).

It is the claim of the respondents that since neither they nor Flora Coyne were aware of the royalty apportionment clause contained in the lease, making the royalty payable on a basis that their ownership bore to the entire leased acreage, that there was, therefore, a mutual mistake of fact which should be corrected by a reformation of the mineral deeds in a manner calculated to render the royalty apportionment clause in the lease inoperative.

It is the claim of the petitioners that since the mineral deeds were made expressly subject to the terms of the lease, that they were as much subject to the royalty apportionment clause as to any of the other terms of the lease; that, in fact, the deeds would have been so subject without an express stipulation contained therein as the lease was of record and all the parties were charged with constructive notice of its terms and provisions. It is the further claim of petitioners that since the parties knew there was an oil and gas lease, but were aware that they did not know its terms, there was no mutual mistake which would justify reformation of the mineral deeds; that even if the deeds could be reformed, such reformation would be unavailing as the lease terms would still control.

## B.

# REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

(1) The decision of the United States Circuit Court of Appeals for the Sixth Circuit does violence to the following universal and fundamental rules of law which are intended to safeguard the integrity and inviolability of contracts:

- (a) A Court is not empowered to make a contract for the parties, which they themselves could not have lawfully and effectually made were they fully informed of all of the facts relative to their transaction.
- (b) A Court is not empowered to make a new and different contract for the parties under the guise of reformation.

(2) The decision of the United States Circuit Court of Appeals for the Sixth Circuit is predicated on the following legal proposition, viz:

“Where there is a mistake on one side, AND KNOWLEDGE OF THE MISTAKE PLUS CONCEALMENT, ON THE OTHER, reformation will be decreed” (R. 493) (Capitals ours).

which legal proposition, in fact, is utterly foreign to the case at bar, for it is undisputed, as the Appellate Court stated, that none of the parties had any knowledge of the existence of the royalty apportionment clause contained in

the lease, and without knowledge, there could be no concealment.

(3) The decision of the United States Circuit Court of Appeals for the Sixth Circuit is of general importance in that there are countless thousands of acres of land in the State of Michigan alone under existing oil and gas leases containing royalty apportionment clauses, and said decision creates a state of chaos with respect to the rights and interests of parties who have heretofore or will hereafter sell or purchase mineral royalty interests in such lands.

WHEREFORE, YOUR PETITIONERS RESPECTFULLY PRAY:

That a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, Number 9596:

Flora Coyne, et al.,  
Appellants,

v.

Simrall Corporation, et al.,  
Appellees,

and that the said decree of the Court of Appeals for the Sixth Circuit may be reversed by this Honorable Court and that your petitioners may have such other and further

relief in the premises as to this Honorable Court may seem meet and just, and your petitioners will ever pray.

Flora Coyne, Bernard J. Coyne, Mary Coyne,  
Genevieve Coyne, Basil Wayne Coyne,  
Charles H. Nixon, Pearl Nixon, Wellington  
Nixon, Fred J. Trumpy and Martha Rose  
Trumpy, Petitioners.

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